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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Price Cap Performance Review  
for Local Exchange Carriers

CC Docket No. 94-1

AT&T REPLY COMMENTS

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### SUMMARY

Notwithstanding the fact that their current price cap formulas have permitted cumulative revenues of \$2.5 billion above their 11.25 percent reference rate of return over the past four years, the LECs seek revisions in those price cap rules that will permit even higher prices and profits on an "automatic pilot" basis. USTA, the spokesman for the LECs' interest in this docket, thus asks the Commission to (i) slash the current productivity offset to 1.7 percent and eliminate the .5 percent "Consumer Productivity Dividend;" (ii) eliminate sharing of excess earnings; and (iii) eliminate any growth adjustment whatsoever in the determination of CCL rate caps. Taken together, these revisions would permit the LECs to raise their interstate access rates, in the first year alone, in excess of \$572 million over what would otherwise occur under the existing rules.

This position should be rejected out of hand. Similarly, claims that the LECs' interstate access services are competitive, and that it is appropriate on that basis to begin substantial streamlining of LEC price cap regulation, or to lift regulatory constraints altogether, have no merit. The indisputable fact is that the LECs continue to enjoy a virtually complete monopoly in the provision of interstate access services. As the

Commission notes in the NPRM, the "LECs currently dominate the provision of access services," deriving 98 percent of all access revenues, with only 2 percent of those revenues associated with alternative access from competitive access providers ("CAPs"). Nor do anecdotal forecasts about future competitive alternatives to the LECs' bottleneck monopolies override this basic fact.

Most pointedly, if robust competition is as imminent as the LECs contend in their comments, their principal aim would be to further increase their productivity and establish more attractive prices for interstate access services -- and they would have no need for, or interest in, the opposite changes they request. Significantly, none of the "expanded set of goals for a LEC price cap plan" proposed by USTA includes "just and reasonable rates" or any mechanism to preclude unreasonably high access charges.

Part I of these reply comments addresses the "transition issues" of the NPRM, and shows that no streamlining of LEC price cap regulation on the basis of competition is justified at this time. Although USTA properly recognizes that any streamlining or increased pricing flexibility should be "commensurate with the level of competition in particular markets measured by objective standards," the standards USTA proposes are

thoroughly inadequate. These criteria provide no confirmation whatsoever that supposedly "addressable" customers do in fact have available "a substitutable access service," as USTA acknowledges is fundamental to any test of actual competition.

Part II then addresses the "baseline" issues identified in the NPRM. The comments confirm that the LECs' productivity adjustment factor has been significantly understated, as demonstrated by LEC earnings during the review period. These higher earnings cannot be attributed to increased LEC efficiency. USTA itself concedes this conclusion in arguing that "the efficiency incentives under the current plan are only marginally better than under rate of return regulation." As to other baseline issues, the comments support the replacement of the "Balanced 50/50" formula for capping common line rates with a per-line rate; an appropriate one-time adjustment in the LECs' PCIs to reflect their reduced cost of capital; and certain other measured changes to existing LEC price cap regulations and procedures.

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REPLY COMMENTS OF AT&T

Pursuant to the Commission's Notice of Proposed Rulemaking and the June 8, 1994 Order of the Common Carrier Bureau,<sup>1</sup> AT&T Corp. ("AT&T") hereby submits its reply comments with respect to the performance review of price cap regulation of the local exchange carriers ("LECs").<sup>2</sup>

I. STRINGENT PRICE CAP REGULATION SHOULD BE MAINTAINED PENDING THE OBJECTIVE DETERMINATION THAT EFFECTIVE COMPETITION EXISTS FOR EXCHANGE ACCESS SERVICES.

Recognizing that price cap constraints "may become unnecessary or counterproductive when market forces generated by competition effectively assure

<sup>1</sup> Price Cap Performance Review for Local Exchange Carriers, 9 FCC Rcd. 1687 (1994) ("NPRM"). The date for the submission of reply comments was extended until June 29, 1994 by Order of the Common Carrier Bureau, dated June 8, 1994.

<sup>2</sup> Appendix A lists the parties that submitted comments, together with the abbreviations used to identify those comments in this reply. Appendix B identifies the pages of these Reply Comments that address particular issues raised in the NPRM.

reasonable, and not unreasonably discriminatory rates" (NPRM, ¶ 92), the NPRM identifies a number of "transition" issues concerning the existence and measurement of exchange access competition, and how a transition might be accomplished if competition develops. Id., ¶¶ 92-100. In predictable response, a number of the LECs and their industry association assert that robust access competition presently exists and that streamlined of LEC price cap regulation is therefore urgently needed. For example, USTA proclaims that "the 'natural monopoly' of local exchange carriers has been swept away," and that the local monopoly is now a complete "myth" (USTA, Att. B, p. 10), such that the Commission must "implement now" a transition mechanism. Id., p. 42. Most of the other LECs support USTA's specific proposals or something very much like them.<sup>3</sup>

To the contrary, there can be no serious dispute that the LECs continue to enjoy monopoly status in the provision of exchange access service.<sup>4</sup> And the prospects for future competition are simply too

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<sup>3</sup> See, e.g., Ameritech, pp. 2-3; BellSouth, p. 81; GTE, pp. 57-60; NYNEX, pp. 19-22; Pacific Companies, pp. 100-03; Rochester, p. 26; SWBT, p. 77; U S WEST, pp. 77-78.

<sup>4</sup> See, e.g., AT&T, pp. 6-21; Ad Hoc, pp. 32-34; ALTs, pp. 12-20; MCI, p. 64; MFS, p. 37; Sprint, pp. 24-27; Teleport, pp. 16-17; Time Warner, pp. 6-12; WilTel, pp. 34-35.

speculative for the Commission to adopt rules, in advance, for the allegedly imminent transition to full competition that the LECs predict. Streamlining of LEC price cap regulation, and the potential transition to reliance on competitive market forces to guarantee just and reasonable access rates, should await -- and reflect -- the actual existence of effective competition.<sup>5</sup>

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<sup>5</sup> As to the two "General Issues" identified in the NPRM (¶¶ 31-34), the comments confirm that the original goals of LEC price caps should continue and that properly revised, LEC price cap regulation can provide substantial benefits to the economy and the public interest. See, e.g., GSA, pp. 2-4. However, USTA's claims that its proposed price cap revisions will (i) increase GDP by \$60 billion (including 100,000 more automobiles sold, 30,000 more housing starts, and 500,000 additional jobs by 2004), (ii) lower inflation by 1.4% on a cumulative basis, and (iii) save consumers "\$130 billion in real terms on their total purchases" (USTA, p. xiv) are, to say the least, strained. For one, USTA cannot seriously contend that with the higher access rates it seeks, inflation would be lower. Rather, USTA's WEFA "study" is based entirely on the assumptions provided by USTA consultants Barby and Vanston that the proposed price cap revisions would result in increased LEC investment and accelerated technological change. Moreover, the WEFA study does not appear to account for the higher interstate toll rates that would result if the proposed price increases were permitted, which would themselves generate pressure for precisely the opposite effects. See, e.g., USTA, Att. 7, pp. 4-6 (describing the changed assumptions used to compare two runs of its model and ignoring the higher toll rates that would occur in comparison to the baseline).



A. There Is No Effective Competition That Has Reduced, Or Will Reduce In The Foreseeable Future, The LECs' Bottleneck Monopoly Power.

The NPRM first seeks comment on what is "the current state of competition for local exchange and interstate access." NPRM, ¶ 95 (Transition Issue 1a). In response, virtually all the commenters acknowledge that meaningful competition in the local exchange is not a present reality, but merely a hope for the future. The LECs currently retain an almost total monopoly over exchange and exchange access services, and competition in those markets is, at best, in an "embryonic state."<sup>6</sup> Moreover, even most LECs recognize that only minimal competition exists today and that more widespread competition is, at best, only a future possibility.<sup>7</sup>

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<sup>6</sup> Time Warner, p. 6. See also, e.g., MFS, p. 39 ("LECs remain dominant in their markets today and will continue to be so for the foreseeable future"); MCI, p. 64 (LECs "remain de facto monopolists"); Sprint, pp. 24-26 (competition does not currently exist nor is it clear when or if it will exist on a broad scale).

<sup>7</sup> See, e.g., U S WEST, p. 69 (extent of local competition "varies widely"), 74 (CAPs currently provide only limited services, but that will change "in the future"); SWBT, p. 82 ("Competition is not ubiquitous throughout the marketplace"); Ameritech, p. 30 (relying on "the potential sources of competition in high volume wire centers") (emphasis added); Bell Atlantic, Affidavit of Richard E. Beville, p. 2 (arguing merely that only three subsets of Bell Atlantic's services are facing significant competition today); BellSouth, p. 94 ("Ultimately, effective competition will develop.") (emphasis added).

There is also no dispute among the commenters that the only firms currently providing any kind of competition in the local exchange today are the CAPs, and that they account for an extremely small percentage of access revenues -- and virtually no local exchange revenues. The Commission itself stated that the three largest CAPs accounted for less than \$500 million of access revenues in 1992, meaning that CAPs account for less than 2 percent of the \$29 billion access market.<sup>8</sup> Other commenters confirm the limited extent of current access competition; for example, one recent study indicated that CAPs account for less than one percent of access market revenues.<sup>9</sup>

The LECs cannot and do not seriously dispute that their access monopolies remain virtually complete. Indeed, Professor Harris (on behalf of USTA) is forthright in admitting that "the percentage of CAP

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<sup>8</sup> NPRM, ¶ 22, n.15.

<sup>9</sup> See Time Warner, p. 9 (citing 1993 ALT Report, Connecticut Research Report: Competitive Telecommunications by Connecticut Research, Vol. I, No. 1, January 1, 1994, and Form M Annual Reports and 10K Reports of LECs); MFS, p. 39 (same). The Department of Justice views the LECs as having 99 percent of the exchange access market. See, e.g., Antitrust and Innovation in a High Technology Society, Address by the Honorable Anne K. Bingaman, Assistant Attorney General, Antitrust Division, U.S. Department of Justice, January 10, 1994, p. 10 ("the local telephone company still handles about 99% of the local traffic").

revenues relative to LEC operating revenue remains small."<sup>10</sup> As a result, USTA simply argues that CAP revenues increased 43 percent between 1992 and 1993.<sup>11</sup> But even if that figure were true, CAPs are starting from such a de minimis base that dramatic percentage increases in their revenues hardly makes a dent in the LECs' monopoly revenues.<sup>12</sup>

USTA also erroneously suggests that a CAP can easily expand to other customers once it has built its core fiber ring in a metropolitan area.<sup>13</sup> However, extending service to additional buildings is extremely

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<sup>10</sup> USTA, App. B, pp. 5 - B-6.

<sup>11</sup> USTA, p. 43 (citing Harris, Appendix B, p. B-5, and Tables B-5 and B-6, which in turn cite "Connecticut Research" -- the same firm that estimated that aggregate CAP revenues were no more than \$220 million (see Time Warner, p. 9)).

<sup>12</sup> USTA also argues that a "study" shows that "CAPs have captured approximately 30% of high-capacity dedicated services (special access and intraLATA point-to-point services for DS0, DS1, and DS3, etc.)." USTA, pp. 35-36. For this proposition, USTA cites Professor Harris's Appendix B (p. B-5), which makes reference to a study by "Quality Services" based on "over 4,500 surveys." Professor Harris does not give a citation for the study, however, so there is no way to evaluate these numbers, which are grossly out of proportion to all other available evidence. In all events, this 30% share figure is apparently based on an arbitrary and entirely artificial definition of a "relevant market" for access services. For example, it bears no relationship whatsoever to the definition of an access market used in the USTA proposals -- access provided through a LEC wire center.

<sup>13</sup> USTA, p. 35 (citing Harris, p. 9).

costly, which as a practical matter limits CAPs to serving only a very small number of large business users. USTA's own experts recognize that "[c]ompetitors' networks provide alternatives to LEC access, but only to those customers whose traffic is sufficiently large to warrant a direct connection and whose premises are close to the CAP's network."<sup>14</sup> Given these natural limits on the potential growth of CAP services, it is premature to assume that CAPs will become full competitors to the LECs in the future, offering truly effective alternatives to "addressable" customers.<sup>15</sup>

Moreover, even the limited successes CAPs have enjoyed may largely be the artificial result of regulation rather than a result of true competition. USTA argues that CAPs compete for high-volume business customers where "they can exploit those price averaging requirements still applicable only to the LECs."<sup>16</sup>

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<sup>14</sup> USTA Attachment 4, Richard Schmalensee and William Taylor, Comments on the USTA Pricing Flexibility Proposal, p. 11 (footnote omitted).

<sup>15</sup> Moreover, key elements of the Commission's efforts to unbundle the LECs' access services and to promote access competition by means of physical or virtual collocation were just recently struck down in response to an appellate attack by many of the LECs. See Bell Atlantic Telephone Cos., et al. v. FCC, No. 92-1619, slip. op. (D.C. Cir., released June 10, 1994).

<sup>16</sup> USTA, p. 35. See also Harris, p. 30 (competitors "exploit[] the 'price umbrella' created by regulatory barriers to pricing flexibility").

Similarly, others have noted that CAPs can compete with the LECs only because subsidies and average pricing rules require LECs to charge above economic cost.<sup>17</sup> Thus, there is good reason to be concerned that the LECs will retain a natural monopoly for virtually all access services, with the CAPs having gained a tiny foothold only because of unreasonably high access rates.

Recognizing the limited role of CAPs, many LECs argue that other competitive alternatives are imminent. For example, USTA argues that "[w]ireless services also threaten LEC access revenues."<sup>18</sup> However, most commenters recognize that wireless services do not currently compete with landline services because, among other reasons, virtually all cellular calls must rely on the local landline network to complete the call. See, e.g., AT&T, pp. 10-11. Therefore, as BellSouth admits, wireless services function "primarily as complements for traditional local services."<sup>19</sup> Furthermore, cellular services have "generally been priced higher than the

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<sup>17</sup> See Comments of AT&T, A Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481, pp. 9-10, 13-14 (filed June 11, 1993) (citing sources).

<sup>18</sup> USTA, p. 36. See also, e.g., BellSouth, p. 78; GTE, pp. 34-36; NYNEX, p. 12; Pacific Companies, pp. 85-87; U S WEST, pp. 70-71.

<sup>19</sup> BellSouth, p. 79.

landline service" (USTA, p. 36), thus preventing cellular from competing effectively as a substitute for access services.

Several LECs also cite personal communications services ("PCS") as a potential competitor to the local exchange, but again this is premature.<sup>20</sup> As one LEC commenter concedes, "PCS is not yet an existing technology."<sup>21</sup> It will require a substantial amount of time for the PCS industry to establish itself after licenses are awarded later this year, and even then, it appears that PCS will have the same limitations as cellular, in that it will rely on the landline system to complete almost all of its calls. USTA and the LECs are thus reduced to citing predictions of "forecasters" that PCS will succeed, but even these "forecasters" are only predicting that PCS will achieve some penetration by "the end of the decade."<sup>22</sup> Therefore, it is simply too early to determine whether PCS will be able to make serious inroads into the LEC monopolies, and the Commission should not adopt transition policies based on such speculation.

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<sup>20</sup> See, e.g., USTA, p. 37; BellSouth, pp. 90-91.

<sup>21</sup> USTA, App. B, p. B-18 (Harris).

<sup>22</sup> USTA, p. 37.

Likewise, there is no dispute that cable operators do not provide competition to the local exchange anywhere in the United States today. USTA's expert can only state that "[i]t is only a matter of time before [cable facilities] will be upgraded technologically" to compete with the local exchange.<sup>23</sup> Although the LECs rely on a number of announcements and plans to conduct trials in a handful of locations,<sup>24</sup> such trials are a long way from actual competition. Upgrading existing cable facilities to provide telephony will be a long and expensive process if it is to occur,<sup>25</sup> and there is no guarantee that cable can compete with landline facilities in either price or quality when that process has been completed. As with PCS, there is simply no basis for concluding in advance that cable companies will soon be providing effective competition to the LECs.

Finally, as to any form of potential local competition, substantial barriers to entry remain that will impede efforts to establish competitive alternatives to the entrenched local monopolies. For example, the

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<sup>23</sup> Harris, p. 4.

<sup>24</sup> See id., Appendix B, pp. B-16 - B-17; NYNEX, p. 17.

<sup>25</sup> See id., Appendix B, p. B-16. See also Economics and Technology, Inc. and Hatfield Associates, Inc., The Enduring Local Bottleneck: Monopoly Power and the Local Exchange Carriers, pp. 86-101 (February 1994) ("The Enduring Local Bottleneck").

vast majority of states still have legal prohibitions on exchange competition. As USTA admits, only a "few" states, such as New York and Maryland, legally permit local competition.<sup>26</sup>

In sum, the evidence is clear that the LECs retain overwhelming control of the local bottleneck monopolies, and that potential competitors face formidable obstacles in trying to establish themselves. For these reasons, it would be premature to conclude that effective exchange competition is imminent or even possible. Access competition cannot be expected to serve as an effective substitute for regulatory price controls for the foreseeable future.

B. The Commission Should Streamline LEC Price Cap Regulation Only After A Clear And Convincing Showing That Actual Competition Would Preclude The LECs' Ability To Charge Unjust And Unreasonable Rates.

The Commission also asks "[w]hat regulatory methods for reducing price cap regulation or streamlined regulation should be adopted for LEC services as those services become subject to greater competition?" NPRM, ¶ 96 (Transition Issue 2). In response, USTA claims that "it is incumbent upon the Commission to implement now a

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<sup>26</sup> USTA, pp. 39-40. Although USTA states that, by its count, 43 states permit "some form of competition," in virtually all of these cases the state does not permit local exchange competition. Indeed, it is striking that seven states still do not even permit intraLATA toll competition.



mechanism by which LECs in competitive markets can obtain relief. . . ." USTA, p. 42 (emphasis added). USTA also repeatedly points to the Commission's decisions since 1991 that have streamlined regulation of certain of AT&T's interstate services and have realigned the remaining service baskets.<sup>27</sup> Contending that it should be accorded equivalent treatment,<sup>28</sup> USTA asserts (p. 10) that "[i]t is useful to compare the LEC price cap plan to the price cap plan applicable to [AT&T]."<sup>29</sup>

USTA's argument, however, proves too much. In short, the record here does not remotely resemble the evidence upon which the Commission based its decision to streamline AT&T's interstate services. These critical evidentiary and analytical differences absolutely foreclose granting similar relief to the LECs now and for the foreseeable future.

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<sup>27</sup> See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880 (1991) ("IXC Order"), recon. 6 FCC Rcd. 7569 (1991) ("IXC Initial Recon. Order"), further recon., 7 FCC Rcd. 2677 (1992) ("IXC Recon. Order"), further recon., 8 FCC Rcd. 2659 (1993) ("IXC Further Recon. Order"), appeal pending.

<sup>28</sup> See, e.g., USTA, pp. vi, 10, n.16, n.17, Att. 4 (Schmalensee and Taylor), p. iii.

<sup>29</sup> The Commission likewise views the AT&T experience as the model for any subsequent streamlining, explaining that "[i]n the case of AT&T . . . price caps proved to be a transitional form of regulation for many services." NPRM, ¶ 92.

When it initiated a proceeding in 1990 to determine whether competition had developed for AT&T's price capped services, and whether such competition was sufficiently robust to permit any streamlining of those offerings, the Commission considered a broad range of evidence bearing on the nature of the interexchange market. Most critically, the Commission analyzed the supply capacity of AT&T's competitors, and whether they had or could readily acquire significant additional capacity to serve interexchange customers. AT&T submitted data there demonstrating that competitors such as MCI and Sprint could immediately absorb as much as 15 percent of AT&T's business day traffic without having to expand their existing capacity, and could incrementally add more capacity with reasonable amounts of investment.<sup>30</sup> Additionally, the Commission made an extensive inquiry into demand elasticity, including evidence that business customers generally considered the services of competing IXC's to be comparable in quality to AT&T's.<sup>31</sup> The Commission also considered evidence of customers' actual behavior in the marketplace: AT&T's market share in business services had declined to less than fifty percent, demonstrating actual proof of

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<sup>30</sup> IXC Order at 5888-89.

<sup>31</sup> Id. at 5887.

customers' willingness to substitute the services of competitors.<sup>32</sup> Finally, the Commission considered a range of additional evidence, including pricing, cost structure, size and resources.<sup>33</sup>

Based on the extensive record before it, the Commission concluded that AT&T's business services market was indeed competitive; that market forces were a superior and effective substitute for regulation in producing just, reasonable, and non-discriminatory prices; and that price caps for Basket 3 therefore could be eliminated consistent with the public interest.<sup>34</sup> In AT&T's view, the Commission reached these conclusions long after it would have been appropriate, in view of the realities of the interexchange marketplace during the 1980s. Nevertheless, the Commission's finding was unquestionably grounded on an analysis of the proper factors for determining the existence of effective competition in the market.

By contrast, the LECs have not even begun to make -- nor could they make -- the sort of showing

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<sup>32</sup> Id.

<sup>33</sup> Id. at 5890-91.

<sup>34</sup> Id. at 5893-96. Since that decision, with the implementation of 800 number portability, the Commission has extended similar streamlined treatment to most of AT&T's Basket 2 services. See Competition in the Interstate Interexchange Marketplace, 8 FCC Rcd. 3668 (1993).

necessary to gain relief from price cap regulation under the standards of the IXC Order. The record here is all but devoid of evidence regarding the relative supply capacity of the LECs and alternative vendors of interstate access. However, the very fact that CAPs now serve only a limited number of buildings even in urban areas is compelling proof that current supply substitutability for access is extremely low.<sup>35</sup> The LECs also have not furnished any data demonstrating that access competitors have gained more than a foothold in the marketplace. Again, the available evidence instead shows that, unlike the interexchange services market -- where substantial competition flourished and the equal access process had eliminated entry and operating barriers years before price caps were first introduced -- access competition is still only in its infancy and faces uncertain prospects for the future. The current market shares of the LECs' competitors also do not remotely approach the thresholds applied to AT&T's services.<sup>36</sup>

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<sup>35</sup> Thus, under the standards established for interexchange service streamlining, the characteristics of the LECs' markets suggest that the LEC's competitors are not even offering substitute services, much less effectively constraining the LECs' market power such that streamlining might be in order.

<sup>36</sup> USTA's attempt to rely on AT&T's statements concerning the relevance of market share data (USTA, p. 60 n. 156) is entirely misplaced. Once competitors have demonstrated substitutability and supply elasticity by obtaining a significant share of

In sum, the factual counterpart to the basis for the Commission's relaxation of AT&T's price cap regulation in the IXC Order is conspicuously missing in this proceeding. No streamlining of LEC price cap regulation should occur until the LECs can make a showing equivalent to what the Commission has required for AT&T's interexchange services.

The proposal submitted by USTA and supported by most of the LECs for a transitional relaxation of price cap constraints on those carriers is likewise unwarranted.<sup>37</sup> While USTA properly acknowledges that any

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the market, the further market share they may obtain becomes less relevant compared to their ability to absorb additional customers in the event of price increases by the incumbent. Thus, in the context of competitors having already obtained a substantial share of the interexchange services market -- demonstrating that competitors offer effective substitutes -- factual evidence concerning supply elasticity and capacity was much more relevant to an analysis of AT&T's market power. It is quite another thing to ignore competitors' shares when those low shares suggest that the services of LECs and their competitors may not, in fact, be substitutable.

<sup>37</sup> The heart of USTA's proposal is an elaborate scheme for relaxing, or in many cases, eliminating entirely the Commission's current system for regulating LEC prices. First, USTA proposes (pp. 58-59) to delineate LEC study areas or pricing zones Market Areas, and would classify these Market Areas as either Initial ("IMA"), Transitional ("TMA"), or Competitive ("CMA"), "based on the level of effective competition within the area" (p. 58, footnote omitted). These Market Areas would also be used to establish categories within four reconfigured baskets, Transport, Switching, Public Policy and Other (pp. 66-72). IMAs could be reclassified as

(footnote continued on following page)

transitional steps must be "commensurate with the level of competition in particular markets" (USTA, p. 57) in order to protect against the possibility of unreasonable pricing "against customers without competitive alternatives" (id., p. 59), its proposals clearly do not satisfy that test and are inappropriate in any event.

Most importantly, USTA proposes to remove regulatory controls long before competitive forces would be sufficient to ensure that monopoly pricing and other anticompetitive abuses could not occur. For example, under the proposed criteria for a "CMA" designation, if a mere 25 percent of the access revenues in a wire center become "addressable," then all customers in that wire

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TMA's if "the existence of an operational expanded interconnection arrangement within a wire center" could be shown (p. 65, emphasis added). This is an obviously deficient standard for assessing the degree of competition, and the error is compounded by the criteria USTA would apply (pp. 65-66) to reclassify TMA's as CMA's -- if in the LEC's own judgment, customers with only 25 percent of the demand for the LEC's interstate access services (or 20 percent of the total market demand for interstate access services of any provider within that area), "have available to them an alternative source of supply," and if customers with 25 percent of the demand for the LEC's interstate access services (or one customer whose demand represents 15 percent of that demand) "actively seek to reduce the cost of their access services" (emphasis supplied). Under these vacuous "standards," the LEC could obtain CMA status for the entire market area even though there is no competitive alternative for many or even most of the services in that wire center. See id. at 66 and n.172.

center would lose price cap protection altogether and the LEC could charge any price for any access service it wished. This proposed standard is demonstrably inadequate.

First, USTA's notion of "addressability" does not equate to effective competitive alternatives available to those customers. "Addressability," as defined by USTA, means simply that some vendor is offering an alternative source of access, even if no one is buying it. See, e.g., USTA, p. 65. USTA's proposal provides for no objective confirmation that the alleged alternative service is in fact an effective substitute for the LEC's access service. Surely the mere "solicitation of bids" for alternative service (see id.) would not be an adequate measure of substitutability, but under USTA's proposal, that solicitation would trigger "CMA" status, even if such solicitation were unsuccessful because there were no responsive bids. Despite USTA's acknowledgment that "substitutable access" must be provided (id.),<sup>38</sup> its proposals thus fail to include sufficient objective measures -- such as market penetration by alternative providers -- that an effective substitute access service is actually available.<sup>39</sup>

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<sup>38</sup> See also USTA, Att. 4, p. 6 (Schmalensee and Taylor).

<sup>39</sup> See AT&T Comments, p. 18 (suggesting that the appropriate metric, among others, is whether at least

Second, even if customers associated with 25 percent of the access revenues in a market area are "addressable" with effective substitutable access service, USTA's proposal offers no protections with respect to the other customers. Under USTA's proposal, with 25 percent "addressability," a "CMA" designation would apply and the LEC could charge customers in that wire center whatever rate it might choose, with no safeguards against unreasonably high or unreasonably discriminatory rates being assessed against the up to 75 percent of consumers who truly have no alternative to the LEC.<sup>40</sup>

Third, USTA simply assumes that all of its access services are equivalent or fungible -- if 25 percent of the revenues in a wire center are addressable, then all access services within that wire center are removed from price cap controls.<sup>41</sup> But, as is the

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30 percent of subscribers are actually using an alternative provider).

<sup>40</sup> This fact suggests that full streamlined treatment of a relevant access service in a relevant access market should only occur in the event that all customers (or at least a substantial majority, and far in excess of 25 percent) have effective substitutes available. Otherwise, the customers without alternatives would face the LECs' unchecked market power.

<sup>41</sup> A CAP merely offering certain transport services (and not switching, signaling, local distribution, or other components of access) would supposedly make

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situation today, a CAP may only offer an alternative to a limited component of the LECs' access service. USTA's proposal therefore leaves no room for more appropriately fine-tuned streamlining, based on showings of sufficient competition for particular services, to particular customers, in particular geographic markets.

In short, a more careful approach to streamlined treatment for the LECs' monopoly access services, tailored to relevant services in relevant markets once actual and effective competition arises, is clearly required. As the Commission properly concluded in the NPRM (§ 94), no substantial streamlining of LEC price cap controls is appropriate "until and unless effective competition occurs." Moreover, the LECs should have to demonstrate that competition has occurred based on the type of factual showings that the Commission has required of AT&T: service-by-service analyses that customers are in fact purchasing adequate substitutes from established and broad-based competitors, which demonstrate that competition can effectively substitute for regulatory price controls. If the LECs can someday make such showings, the Commission can then implement whatever specific and targeted streamlining may be

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customers within that wirecenter "addressable" for all access services.